



TESTIMONY REGARDING:

**T2017-5852: EXAMINING DOI'S REPORT ON  
NYCHA'S PERMANENT EXCLUSION POLICY**

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL'S  
COMMITTEE ON PUBLIC HOUSING  
AND  
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS

PRESENTED BY:

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## **I. Introduction**

MFY Legal Services, Inc. envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy and bringing impact litigation. We assist more than 20,000 New Yorkers each year.

MFY annually serves more than 3,600 tenants, including more than 850 NYCHA tenants. MFY is committed to working with NYCHA and the City Council to protect the safety and accessibility of public housing for low-income New Yorkers so they can continue to be an integral part of New York City communities. As a member of the Right to Counsel Coalition, MFY Legal Services also supports the inclusion of NYCHA termination proceedings as part of the City's commitment to provide universal access to counsel for tenants facing eviction.

This testimony is submitted in response to the Department of Investigation's (DOI) report and recommendations on permanent exclusion of residents of the New York City Housing Authority (NYCHA). DOI's recommendations are misguided and blind to the real needs of NYCHA residents. They are based on a superficial and misleading consideration of the wrong data with no interviews with NYCHA residents or other stakeholders. They would result in arbitrary displacement of residents and families who pose no danger to their communities. Finally, they contradict the Council's, Mayor's, and federal government's stated commitment to increasing affordable housing opportunities for people with criminal justice involvement.

## **II. Our Clients' Experiences**

As advocates for public housing tenants facing eviction, including as a direct result of the ineffectiveness of the current NYCHA permanent exclusion policy, we feel that reformation of the policy is desperately needed. Our clients' stories demonstrate how permanent exclusion often results in the unnecessary division of families and has no real bearing on public safety.

Despite DOI's cherry-picking of a few sensational examples, the NYCHA residents MFY meets every day have had family members excluded for nonviolent, often low-level offenses. Strict enforcement of permanent exclusion orders would often be disproportionate to the actual seriousness of the situation and the realities of the violation.

For example, Ms. W. agreed to the permanent exclusion of her brother, George, in the 1990s after he was arrested for drug possession. Over the next decade and a half, Ms. W. submitted to countless invasive apartment inspections, none of which showed any sign of George's presence, until one afternoon when inspectors found George at Ms. W.'s apartment babysitting her three children. Ms. W. had suffered a heart attack that morning at work, and from the emergency room called the only person she could find who was available on short notice to be there when her children came home from school. Hospital records confirmed Ms. W.'s story. A nurse confirmed that George had come to the emergency room that morning to retrieve the apartment key from Ms. W. George's girlfriend confirmed that he lived with her in a shared apartment in Fort Greene. NYCHA began termination of tenancy proceedings against Ms. W. for her violation of the

permanent exclusion agreement, but after reviewing the evidence settled for a one-year probation, which Ms. W. completed successfully. Ms. W. and her children still live in their NYCHA apartment and have not been accused of any wrongdoing since then.

Ms. W.'s story did not make the front pages of DOI's report, but she is in there. She is counted, anonymously, as one of NYCHA's "failures" to strictly enforce its permanent exclusion policy. DOI did not bother to learn the facts of her story, or of the thousands of stories like hers, and urges NYCHA to ignore those facts as well. (Notably, DOI did not interview any NYCHA residents in compiling its report.) Fortunately for Ms. W., her children, her employer, and her neighbors, NYCHA did examine the facts of Ms. W.'s case. NYCHA did weigh Ms. W.'s violation against the exigencies of her situation. NYCHA did make an individualized determination of the remote danger George posed to his sister's neighbors. NYCHA did exercise its discretion to make an obviously decent, common-sense decision.

MFY and NYCHA often disagree about how the balance should be struck and the agency's discretion exercised in particular cases. But MFY and NYCHA agree that the decision should always be made based on the specific facts of each case after careful examination of the totality of the evidence. DOI disagrees and laments that Ms. W. was not evicted in the name of public safety.

### **III. Flaws in DOI's Report**

NYCHA residents do not need willfully blind, one-size-fits-all policies that ignore the realities of their communities. They do not need more tough-on-crime grandstanding. They need more of the painstaking work that NYCHA has begun in listening to stakeholders and crafting a more rational, transparent exclusion policy. That work is still in progress, and MFY and NYCHA disagree on some points, but we applaud NYCHA's willingness to do the hard work of talking not only with residents, but also with legal advocates, workers, experts, and other stakeholders.

This is work that DOI did not do, which may be why its report is riddled with errors and misperceptions, including its reliance on bare arrest records without any other evidence of criminal conduct. The Department of Housing and Urban Development (HUD) has made clear that an arrest, by itself, cannot be used as evidence that a crime has occurred in bringing charges against public housing residents. *HUD Notice H 2015-10*, November 2, 2015 (found at <https://portal.hud.gov/hudportal/documents/huddoc?id=15-10hsgn.pdf>). HUD has also stated that blanket bans against residents with criminal conviction histories violate the Fair Housing Act (FHA), and that public housing authorities must conduct individualized determinations before excluding residents for criminal conduct. *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, April 4, 2016, p. 6 (found at [https://portal.hud.gov/hudportal/documents/huddoc?id=hud\\_ogcguidappfhastandcr.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf)). DOI's recommendations would likely violate federal law on both counts.

DOI also naively accepts without question that arrest records accurately reflect arrestees' actual home addresses. Had DOI spoken with NYCHA residents, the agency would quickly have learned that excluded family members do not rush to change the addresses on their government identification when they become homeless, and that they are likely to give their stably housed

relatives' addresses for lack of a better answer when interrogated by police. "Where do you live" is not a simple question for homeless and precariously-housed people. DOI's ignorance of the basic realities of NYCHA residents' lives undermines the relevance and reliability of its conclusions.

The DOI's recommendations also fail to consider the resulting increased burden on New York City's already severely overcrowded shelter system. At a time when the Mayor and Council have made extensive and unprecedented commitments to protecting affordable housing and fighting homelessness in the City, the DOI's proposals are out of step and counterproductive. Triggering a surge in homelessness among the City's most vulnerable families will not improve public safety.

#### **IV. Recommendations**

MFY supports the direction in which NYCHA has begun to move with its proposed reforms of its permanent exclusion policy. Those reforms would base the policy on research and data; would shift focus towards violent conduct; would increase transparency for residents; and would improve the process by which tenants can apply to lift exclusions when excluded family members have demonstrated rehabilitation. These are important steps towards better balancing resident safety with NYCHA's mission to "increase opportunities for low-and-moderate income New Yorkers by providing safe, affordable housing and facilitating access to social and community services."<sup>1</sup>

MFY urges the City Council and NYCHA to reject DOI's recommendations, which, if adopted, will exacerbate homelessness and hardship among NYCHA families while doing nothing to increase public safety.

Rather than encouraging NYCHA to more aggressively pursue evictions of entire families in cases where mere arrests may have occurred in the household, resources would be better allocated to support community services and programs that enrich the lives of NYCHA tenants, or to improving the quality of life of residents, including efficient access to repairs related to public safety (such as securing buildings with working locks or increasing light in buildings and on grounds).

For these reasons, MFY strongly supports the reformation of NYCHA's permanent exclusion policy along the lines of the proposals that NYCHA has developed through painstaking reflection and consultation with numerous stakeholders and communities. MFY strongly opposes DOI's recommendations, which would have devastating practical impact on our clients and result only in the superficial appearance of safety.

#### **V. Conclusion**

MFY Legal Services strongly recommends that the City Council carefully consider the consequences of adopting the DOI's recommendations regarding reformation of NYCHA's permanent exclusion policy, and commends the Council for its continuing efforts to support safe, affordable housing for all New Yorkers.

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<sup>1</sup> New York City Housing Authority: About NYCHA, <http://www1.nyc.gov/site/nycha/about/about-nycha.page>. Accessed April 18, 2017.